

Fall 1993

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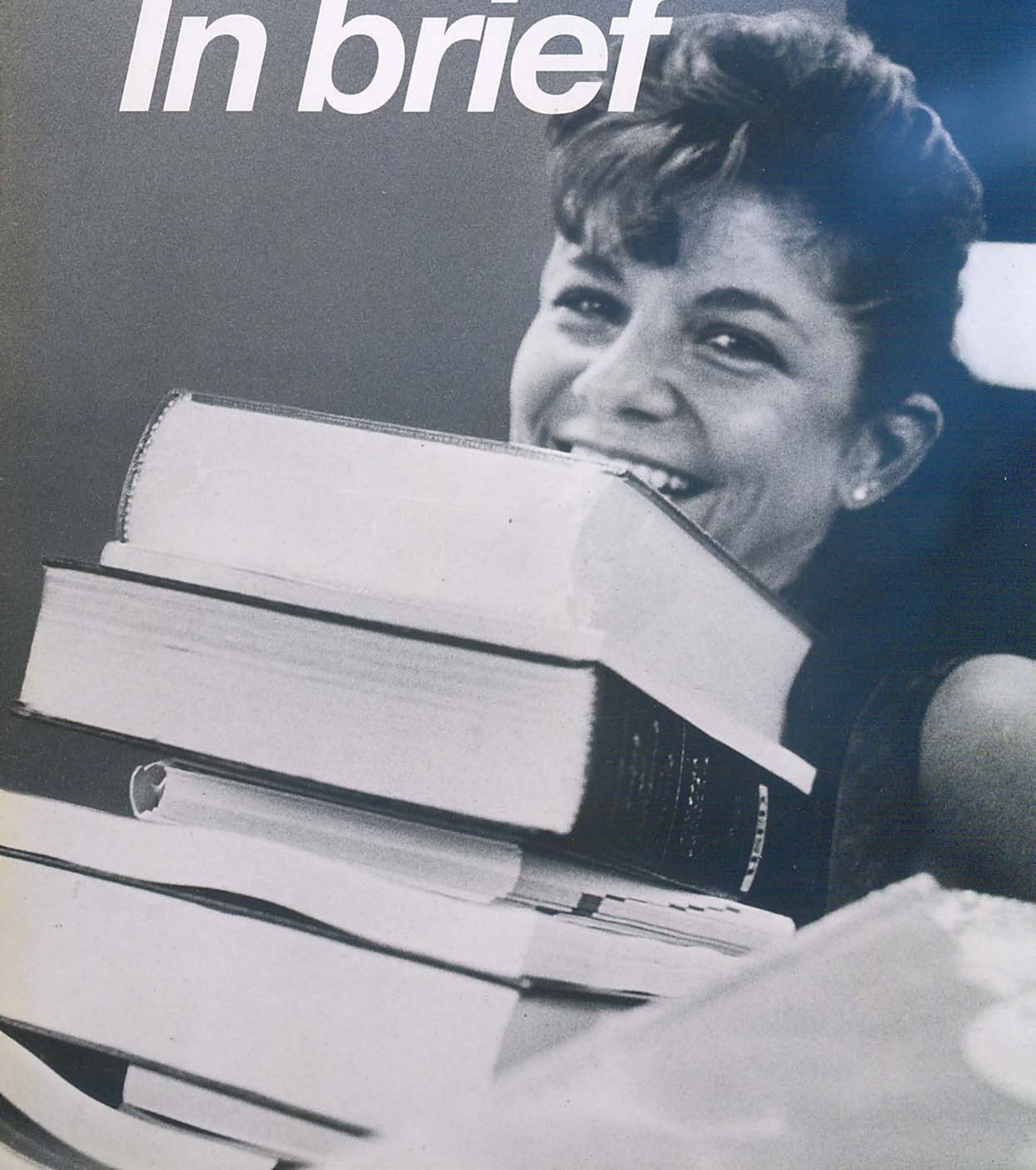
New York Law School

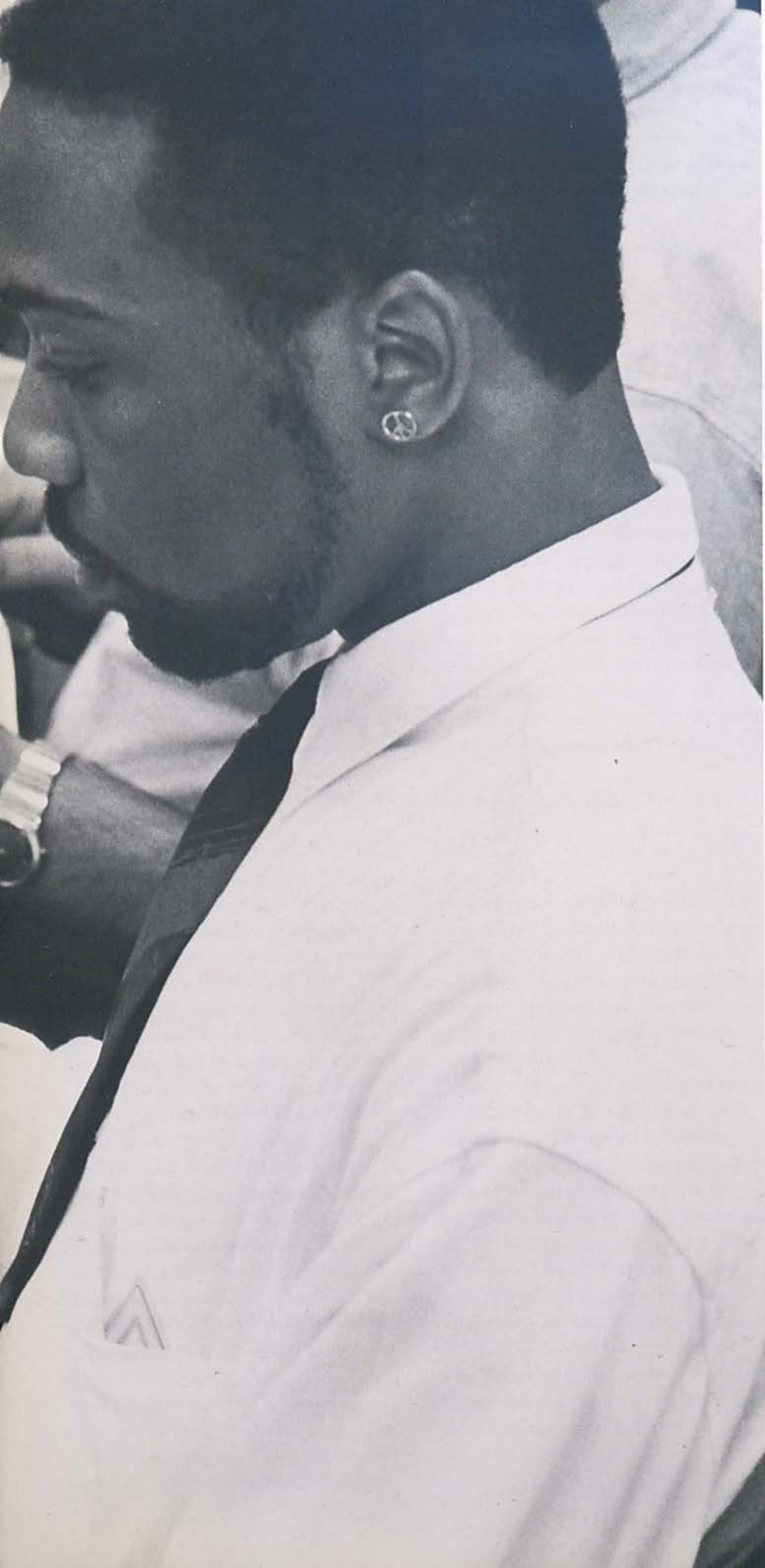
The New York Law School

Volume 12 Number 1 Fall 1993

NYLS

In brief





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On the cover and opposite:

As they acquired textbooks and filled out forms in their first day on campus, the students of 1993's entering class passed from historic cast iron Tribeca exteriors into the fully modernized classrooms, library and other completely renovated facilities of The New York Law School... and entered an academic environment that is integrating a new curriculum emphasis with the traditional course of study.

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Harriet K. Inselbuch, *Associate Dean for Development and Public Affairs*

Larry Starkey, *Director of Communications Editor*

Christina Bishop, *Assistant to the Editor*

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Dinner Dance to Honor



*The 1993 Dinner Dance Gala
Honoring Beverly C. Chell '67
Wednesday, November 10, 1993
Grand Hyatt Hotel
Park Avenue at 42nd Street
Cocktail Reception: 6:30 p.m.
Dinner & Dancing: 7:30 pm.
Music by The Lester Lanin Orchestra
Black Tie Preferred
RSVP Steve Johansen, (212) 431-2808*

1993 Dinner Dance Chairs

Alumni Co-Chairs

Sylvia D. Garland '60
Michael Miller '84

Trustee Co-Chair

Stanley S. Shuman

The 1993 Dinner Dance Gala festivities on November 10 will honor Beverly C. Chell '67 as "Alumna of the Year" in recognition of her professional success as an attorney and corporation executive, as well as for her service to The New York Law School.

Hon. Eli Wager '54 will also be singled out for special recognition, as will major donors Consolidated Edison Company, Hedwig and Charles Feit '54, Patrick J. Foley '51, William Randolph Hearst Foundation, Kresge Foundation,

B.A. from the University of Pennsylvania and the LL.M. from New York University. She is a member of the Board of Visions, a charity serving the blind and "would be an avid golfer if I had the time". A supporter of the Law School for many years, she was elected a member of the Board of Trustees in June, 1993.

Also recognized during the evening will be Hon. Eli Wager, of counsel to the law firm of Farrell, Fritz, Caemmerer, Cleary, Barnosky & Armentano, P.C., of Uniondale, Long Island, who will be presented a Special Recognition Award in appreciation of "his inspiring leadership and dedication to The New York Law School and in recognition of his distinguished and scholarly career as a jurist."

Justice Wager's public service career goes back to 1961, and includes positions as a four-term member of the New York State Assembly and as a New York State Supreme Court Justice. He was the first appointee to the Supreme Court, 10th Judicial District, selected by



K-III Communications Corporation Co-Founder is "Alumna of the Year"...

and Leonhardt Foundation.

Vice Chairman and General Counsel, as well as a founder of K-III Communications, Beverly Chell has been a major presence in reshaping the publishing industry since 1981.

After a brief career as a criminal lawyer, she entered corporate law in 1969 and by the mid-1970's had begun specializing in acquisitions as Vice President, Corporate Secretary and Member of the Board of Directors of Athlone Industries.

In 1981, she joined Macmillan, Inc., rising to the position of Vice President and General Counsel and becoming a major strategist in that company's acquisitions and joint ventures activities as well as playing a key role in the hostile takeover battle between Macmillan and the late publishing magnate Robert Maxwell.

In 1990 Ms. Chell became Vice Chairman and General Counsel at K-III, which she co-founded. Now a billion-dollar media and communications company, it publishes consumer magazines ranging from New York to Seventeen as well as the school publication Weekly Reader and the Funk & Wagnalls encyclopedia. Other K-III divisions publish trade magazines, journals and directories as well as operate specialty and professional book clubs. Total revenues for the firm are expected to reach over \$800 million in 1993.

In addition to her J.D. from The New York Law School, Ms. Chell holds the

the Governor's Judicial Nominating Committee. In addition to his years on the Bench, Justice Wager has spent more than a quarter-century in private practice, appearing in trial and appellate courts in both civil and criminal cases.

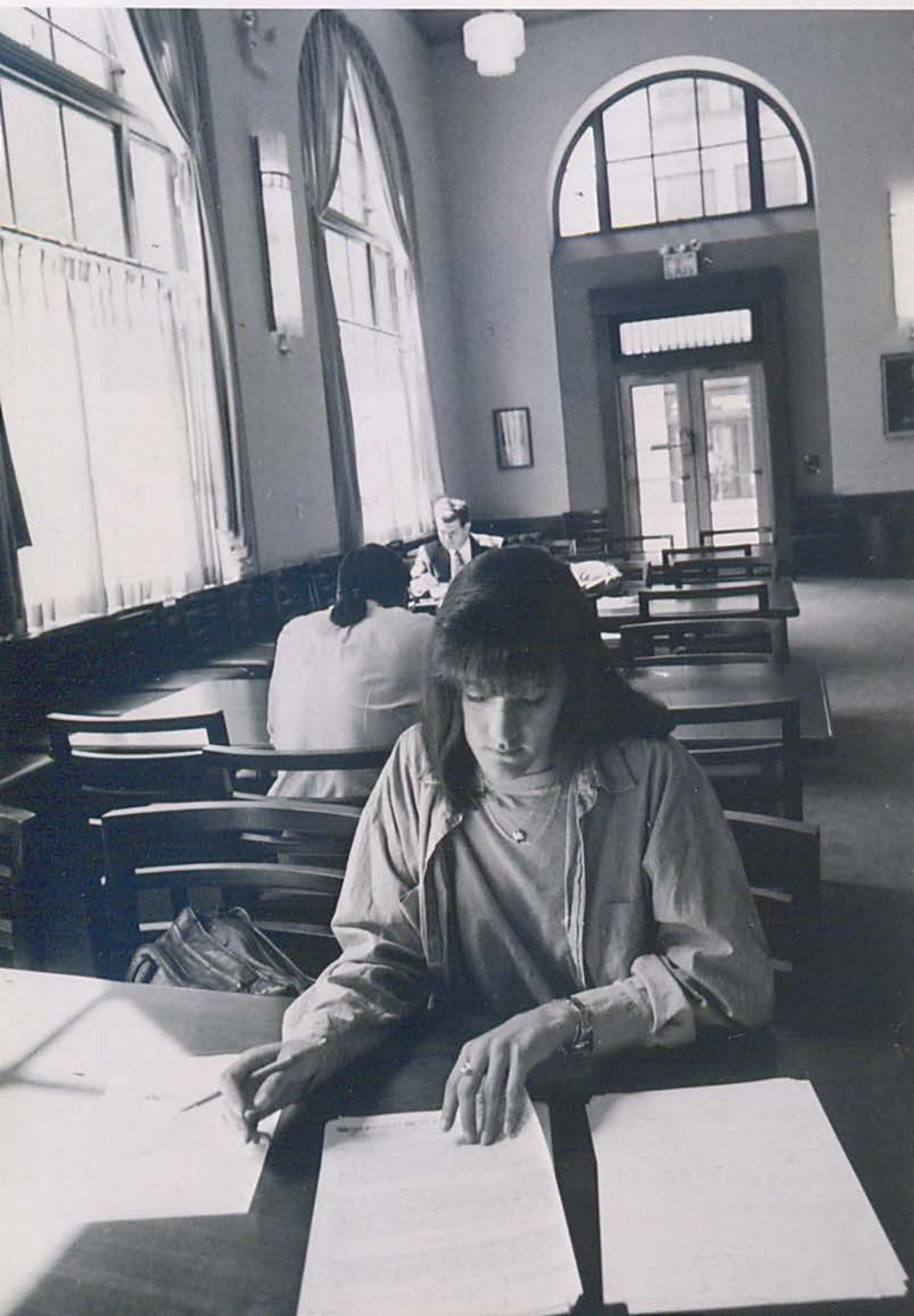
Justice Wager is a member of the Class of 1954 of The New York Law School, and has served as both a Trustee of the Law School and as President of its Alumni Association. He was 1984's Distinguished Alumnus, and in 1992 was presented with the Charles W. Froessel Award for outstanding achievement in the legal community.

The dinner dance is also an opportunity for the Law School to thank major donors to the Second Century Campaign. Lawrence S. Huntington '64, Chairman of the Board of Trustees, will do the honors. ■

Curriculum Focus:

"The Attorney's Perspective"

By Ellen Ryerson
Associate Dean for Academic Affairs



In the spring of 1992, even before he formally took office, Dean Wellington appointed a faculty committee to recommend to him, in order of priority, those areas of potential improvement in the School on which to focus energy and resources over the next few years.¹ A year later, when the report of the Planning Committee was overwhelmingly adopted by the faculty after two retreats and the exchange of numerous memoranda, the first priority for innovation was the curriculum.² It having been my privilege to chair the Planning Committee, I am pleased to have an opportunity to explain to alumni and students and other friends of the School what the faculty seeks to accomplish through this curricular reform.

The Planning Committee's goal was to develop a "more focused and distinctive approach to professional education"³ that would also promote

¹ Professors Karen Gross, Randolph Jonakait, Edward Purcell, Richard Sherwin, and Nadine Strossen served on the committee.

² The two other priorities for faculty attention in the near term were recruitment procedures that might strengthen our students' preparation for professional study and means for strengthening our student publications. The faculty also recommended that the Dean take administrative action to pursue the following priorities: a smaller student body, a more diverse faculty and student body, equitable distribution of responsibilities among faculty members, orientation of the staff to service of faculty and students, and improved climate control systems and elevator service.

³ This and all further quotations are from the final report of the Planning Committee unless otherwise indicated in the text.

post graduate placement opportunities for our students. The curricular reform recommended by the Committee and adopted by the faculty is based on the idea that the legal academy in general, and New York Law School in particular, have a responsibility to prepare students for productive and responsible lives as practicing attorneys, whether in the public or the private sector. Furthermore, the faculty concluded that to fulfill this responsibility, legal education should focus more on the law and legal institutions as practitioners actually perceive and use them in service of their clients, their profession, and their society.

The curricular reform inspired by these ideas is not radical, but it is intended to redress an imbalance in legal education. That imbalance is between the constant attention given to the appellate judge's perspective on the law and the lack of systematic attention given to the attorney's perspective on and role in law and legal institutions. To redress this imbalance does not mean abandoning the study of doctrine as it evolves through judicial decision making; rather, it means broadening legal education to include a consideration of legal rules, policies, and procedures from the practitioner's point of view.

This approach to legal education is also different from the one taken in clinical and lawyering skills programs at NYLS. It does not seek to promote a "practical" professional experience as opposed to a "theoretical" one, or to develop professional skills separately from the study of substantive or procedural law. On the contrary, this approach seeks to break down such compartments. The faculty hopes to integrate considerations of strategy

(how legal rules, policies, and institutions can be used to advantage in a given situation) and normative considerations (the ethical and social implications of strategic choices) into the study of the many traditional subject matters of legal education and scholarship.



"Rarely will practitioners encounter or contemplate a legal issue isolated from complicating strategic and normative concerns; why should students do so routinely? To function well and fully as a practicing attorney, and to prepare students to do that, requires both the doctrinal sophistication that comes from scholarly specialization in a body of law and sophistication about how lawyers use analysis and interpretation of doctrine, as well as other tools, in the real world."

Dean Wellington sounded a similar theme in a speech to the New York County Lawyers' Association, entitled "Should Law Schools Teach Law?," that was excerpted in this magazine in the Spring 1993 issue. As Dean Wellington

said, "many of us at New York Law School are interested in promoting what might be called lawyer-centered education ... Do not mistake this for an emphasis on 'nuts and bolts' ... Lawyer-centered education must involve skills training, but, if it is to be excellent, it also must have theoretical and doctrinal content."

With some such courses already included in the curriculum, over the next three years the faculty wants to introduce at least fifteen additional courses that will integrate consideration of the attorney's perspective into traditional areas of study. Several informal ideas for courses were appended to the report of the Planning Committee. One of these suggested creating a course called "Small Business Planning," in which students would act as the hypothetical attorneys to a small corporate client through its full life cycle from formation, through various crises, to dissolution. Another suggested a seminar on the uses of scientific evidence in which, rather than produce the usual paper resembling a law review article, students would be assigned to represent one or the other of the parties to a toxic tort case; in that role they would read the relevant scientific studies, as attorneys do, and summarize them. Then – only after having grappled with the imperfect state of the scientific knowledge that is generally available – they would come to the question of what "causation" can mean given this kind of information and what rules should regulate the presentation of scientific information to the factfinder in such cases. Another course, which is being taught for the first time this year, explores techniques of persuasion – the "rhetorical choices available in conveying a point of view, describing a set of facts, directing (or diverting) a reader's



attention, ... stirring ... emotions, or otherwise enlisting support for one's own cause" – for what makes them effective and legitimate or illegitimate.

These courses and many others that would integrate the lawyer's perspective into traditional studies can take place entirely in the conventional classroom setting. Other new or revised courses would combine a seminar in a given body of law with supervised placements for the students in offices and agencies that practice this body of law, so that the class could discuss concerns that arise out of practice at the same time as they are studying the rules and policies that prevail in that field. The School already has

several such courses – for example, the Criminal Justice Clinic taught by the Honorable Ernst Rosenberger '58, the Environmental Practice Workshop taught by Professor David Schoenbrod, and the Bankruptcy Policy Workshop being taught by Professor Karen Gross for the first time this fall. There are many other possibilities. Besides accomplishing an interactive educational end, these externship courses or workshops promise to help with the second prong of the faculty's purpose: to improve our students' opportunities for post-graduate employment.

This curricular reform also echoes some of the concerns raised in the American Bar Foundation's report entitled "Legal Education and Professional



Development" which was published during the deliberations of the Planning Committee. That is, the reform is aimed at preparing students to do well the many things that lawyers do in addition to legal research and analysis of doctrine. Chief among these other professional "skills" that should be practiced in the context of traditional bodies of law are "helping clients to define goals" and planning effectively to help clients achieve their ends over time, "uncovering the relevant facts and deciding whether and how to use them, communicating persuasively orally and in writing," and "identifying and resolving ethical problems."

As the Planning Committee said, "education that requires students to consider legal rules and policies from the perspective of the practitioner will better prepare them to recognize and rise to the responsibilities and opportunities that they will have as members of the bar. Considering how lawyers participate in the legal system, and the tools available to them in pursuing their clients' ends, will naturally and continually raise ethical questions in meaningful context; that is, it will raise normative as well as strategic questions." Such an education should prepare students better to make the many difficult decisions they will have to make in serving their clients, their profession, and their society. ■

Professor Lung-chu Chen Returns Home to a Hero's Welcome as... Taiwan's James Madison



... It is high time for the people
concerned with the
future of Taiwan in the world arena
to work together, with vision, understanding
and good will, to
achieve the common good for all.
If not now, when?

Lung-chu Chen





Celebrated as one of Taiwan's chuang-yuan, or first talent in the nation, Lung-chu Chen was en route to a distinguished career in public service in 1960 when he made an unconscious choice to activism in the only accessible forum: an international academic career dedicated to heightening the awareness of the world community on the question of Taiwan's nationhood.

Not until thirty-three years later was the potent effect of his seemingly removed role as scholar palpable among Taiwan's people, who turned out in the thousands last spring to hear Lung-chu Chen speak during his three-week return to Taiwan. Voicing the long unexpressed consensus that "China's claim or threat to Taiwan remains one of mere rhetoric...and that the question today is to acknowledge Taiwan as an independent state in name as in fact," he opened a discussion that has intensified since then, and brought Taiwan to the attention of the current session of the U.N. General Assembly.

It was his first trip since 1960, when he left Taiwan to continue his studies in the U.S. The top student in his class in the Department of Law at National

Taiwan University, he had finished first out of four thousand on the National exam for judgeships and higher public posts in 1957. Earning his J.S.D. at Yale University, his latest academic achievement, and his marriage in 1967 in the U.S., once again captured the attention of the Taiwanese press.

Almost simultaneously, however, his voluntary exile was sealed for the next three decades. News of the publication of Chen's first book reached the Kuomintang's (KMT's) intelligence network and one week after praising him, the Taiwanese press labeled Chen a national traitor. He remained in the U.S. finding that he could neither write nor call without censorship of his communications and that his family was now subject to the intimidation rituals of the Kuomintang's surveillance officers.

The book that incurred Chen's black listing by the Kuomintang, *Formosa, China and the United Nations*, was written with Yale professor Harold D. Lasswell, and was a product of the New Haven School of Policy Science at Yale University which Lasswell founded with Myres S. McDougal in the 1940's. Dedicated to what they termed a policy-oriented approach, the New Haven School invokes the law as a problem-solving tool in contemporary contexts where its application may secure common interests. Adopting Taiwan as a case study, Chen and Lasswell traced the separate political and cultural history which existed before Chiang Kai-shek and two million Chinese citizens were exiled to Taiwan in 1949. Demonstrating that Taiwan, possessing control over both a defined territory and population, administers its internal affairs and participates in foreign relations, Chen and Lasswell

posited that Taiwan met the international legal standard for independent nationhood.

Chen and his colleagues aimed to modify an international perception dominated by the Chinese lobby for one united China. Taiwan's former seat in the United Nations under the title of "the Republic of China," until 1971 obscured for many the significance of the distinction Chen and Lasswell had exposed. Envisioning Taiwan as an independent state positioned alongside, rather than as a representative of, People's Republic of China, Chen held fast to the belief that the most effective way to influence world judgement was through contributions to legal scholarship that could not be ignored.

But by the time Chen was a research associate at Yale in the late 1960's he was increasingly pressured by a small circle of Taiwanese-American activists to engage in more direct promotional activities. As a member of the American-based World United Formosans for Independence, Chen was part of an elite circle of intellectuals abroad who expressed human rights grievances on behalf of the Taiwanese people throughout the 50's, 60's and 70's. Chen's frequent lectures at universities around the country from 1968 to 1972 earned him considerable attention from the media, which led to a number of television interviews and an op-ed piece in the New York Times. It was rumored among American intellectuals that the members of the World United

Formosans for Independence were the exiled members of a potential Taiwanese democratic government.

Drawing on the conclusions reached in his first policy-oriented study, Chen went on to explore the period of transition to independence and long-term constitutional goals. Chen's second major work, *Independence and Nation-building of Taiwan*, disseminated underground, reached a cross-section of Taiwanese and earned him the popular title of "Master Theoretician of Taiwanese Independence and Nation-building" for his forceful expression of his principle of "one China, one Taiwan." Chen's formulation, which included self-determination for the people of Taiwan, was formally introduced as a draft resolution by the Saudi Arabian delegation to the United Nations in the September 1971 session of the General Assembly. However, because of the changing dynamics of bloc politics in the United Nations, the General Assembly acted to seat the People's Republic of China and to expel Chiang Kai-shek's delegation.

With the KMT's martial law still in full force in Taiwan, social stirrings for democracy were faint. In striking contrast, however, the Taiwanese people functioned according to the rudiments of democracy in their economic lives. Throughout the period of martial law, from 1948 to 1987, free market commerce flourished, and Taiwan distinguished itself in the international community, gaining the recognition of many nations during this period. By the close of the 1970's, Chen believes that Taiwan's economic development had contributed to a



gradual transformation taking place in its cultural and political dynamics.

This process, which Chen terms "democratization and Taiwanization," accelerated in the 1980's and culminated in the lifting of martial law in Taiwan in 1987. During this period, Taiwanese occupied a growing number of the public posts in the KMT's governmental network. In part a result of natural demographic changes, the governing population who had arrived in the original exile with Chiang Kai-shek was diminishing and their children identified more readily with Taiwan than with mainland China. Taken together, Chen believes the combination of these gradual social and economic changes assembled a crucial foundation for democratic ideology.

When the United Nations seated People's Republic of China as China's representative, Chen's initial reading of the gap in world understanding proved prophetic. In retrospect this spring, Chen described how the one-China

premise had remained intact, "The tables were turned... China was in and Taiwan was out. An old myth was replaced by a new myth. The old myth was that before 1971, Chiang's KMT regime represented mainland China as well as Taiwan in the United Nations. And the new myth was that, after 1971, the PRC represented Taiwan as well as China in the United Nations. The status of Taiwan, a colony of Japan from 1895 to 1945, which was the crux of the Chinese question in the United Nations, was not addressed at all." Concluding that the U.N. would not be, at least temporarily, the sphere of action for the Taiwanese independence movement, Chen reappraised his role at this critical juncture and returned to scholarship. It was shortly after that he joined the faculty at The New York Law School.

With the death of Chiang Ching-kuo, the last direct political ties to Chiang Kai-shek and the Kuomintang's original regime were loosened. Taiwanization reached the highest level of government in 1988 when the native-born Lee Teng-hui succeeded to the Presidency. Like a majority of his ministers, he holds an advanced degree from a major American university, and represents an ever-growing number of prosperous and internationally-educated Taiwanese. With the Democratic Progressive Party (DPP), Taiwan's major opposition party to the KMT, occupying 51 seats out of 161 seats in the legislative Yuan, Taiwan's equivalent of a parliament now represents Taiwan's population and its political realities. In addition,

a dichotomy of persuasion has emerged in the KMT itself. Seeking to preserve the mainland's hegemony over Taiwan, the "Chinese" KMT's appeals to Beijing are being significantly challenged by the mainstream "Taiwanese" KMT.

With these developments, the push toward further reform once again was initiated in the international arena, and Chen was called to the fore to provide intellectual leadership. In 1991, he was the keynote speaker at the Taiwanese American Conference on the East Coast, attended at Cornell University by over 1600 scholars and activists. The Conference affirmed that Taiwan, as a sovereign independent state through effective self-determination of its people, is presented with new opportunity to play an active and constructive role in international arenas. Chen proposed a new strategy of simultaneity in response to changed conditions, "with all its shortcomings and tension, this remarkable political transformation toward democracy and human rights, along with impressive economic development, is what

'the Taiwan experience' is all about." Applying for membership not only in the United Nations but in other relevant international governmental organizations is, in his view, a formidable task of the utmost importance that requires the united efforts of all Taiwanese people, both at home and abroad. In so doing, Chen asserts that applying with the name "Taiwan" is the most appropriate one because it is the only title which signifies at once a unique geographical, political, and cultural character.

With the KMT's blacklist destroyed just one year later, Professor Lung-chu Chen was invited in May of this year by the President of National Taiwan University to give a series of lectures on the most important issues facing Taiwan. Speaking before thousands of people in city, small town and university settings alike, the distinction between Chen's pursuits as scholar and activist now blurred. During his opening remarks at Taiwan University, Chen began in Mandarin Chinese, but quickly shifted gears and continued in Taiwanese. Surprising even himself with this revolutionary gesture, Chen was not completely prepared for the reach of Taiwanization into official culture.

Addressing new trends in protection of human rights, Chen asserted that Taiwan must meet its next major challenge, insisting that "access to the media of mass communication — broadcast media as well as print press — must be genuinely open and fair. The KMT monopoly of TV networks

has to change." Concluding with a lecture further exploring the establishment of a constitutional culture, Chen advised that "it is time for Taiwan to take the first step now. Make no mistake about it — it will be a long, uphill fight for the people of Taiwan...It is high time for the people concerned with the future of Taiwan in the world arena to work together, with vision, understanding and good will, to achieve the common good for all. If not now, when?"

Invited back to Taiwan to address the DPP's international conference on Taiwan's expanding role in international affairs, and to meet privately with President Lee Teng-hui just two months after his initial trip, many expect that Lung-chu Chen's next role will involve creating and shaping a constitution in an independent, democratic Taiwan. ■



The Walter M. Jeffords Distinguished Writing Award, founded in honor of the late Trustee, is among many honors given to The New York Law School's highly regarded faculty for its scholarly production — which last year alone resulted in the publication of more than eighty articles and nine books. The Jeffords Award for 1993 was bestowed on two books published during the year: Professor Jethro K. Lieberman's **"The Evolving Constitution: How the Supreme Court Has Ruled on Issues from Abortion to Zoning"** (Random House, 1992) and Professor Edward A. Purcell, Jr.'s **"Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America 1870 - 1958"** (Oxford University Press, 1992).

Professor Lieberman, who is Director of the Legal Writing Program at The New York Law School, is a 1964 Yale graduate who earned a J.D. in 1967 from Harvard. Following a distinguished career in publishing, he joined the Law School's faculty in 1985. He is the author of several books, including **"The Litigious Society"**, which won the American Bar Association's Silver Gavel Award in 1982, and **"The Enduring Constitution"**, which won the Silver Gavel in 1988.

Professor Purcell is a 1962 graduate of Rockhurst College who obtained an M.A. from the University of Kansas and a Ph.D. from the University of Wisconsin before earning a J.D. in 1979 from Harvard. A respected historian as well as experienced private practitioner, he won the Frederick Jackson Turner Prize of the Organization of American Historians for his first book, **"The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value."** He has taught at The New York Law School since 1989.

Some Thoughts On Interpreting the Constitution

By Professor Jethro K. Lieberman

The Constitution of the United States is beguilingly — and misleadingly — short, tempting some people to suppose that, unlike sacred texts, it can be read and understood by anyone...[In fact] The Constitution is elusive, ambiguous, murky, sometimes quite opaque. Many of its phrases were not fresh creations but encrusted with history — for example, "due process of law." Other words and phrases have quite technical meanings accessible only to those schooled in legal arcana — "letters of marque and reprisal," even "common law." Parts of the text are narrow and specific (the age below which someone may not serve as president); other parts are broad and tantalizingly general ("equal protection of the laws"). In short, even if the Framers had not been practically deified within a generation of their handiwork, the Constitution of the United States inevitably would have come to be just like a sacred text, its meaning knowable only through some human, and fallible, means of interpretation.

The Constitution is silent on the question of how to interpret itself. It does not say, for example, "In resolving disputes over the meaning of this Constitution, choose that meaning intended by the drafters." Likewise, it does not say, "Interpret the words to fit the current situation."

Besides, what we really should wish to know is what the Framers or the Ratifiers thought about the very question of interpretation itself. After all, if we are to be bound by their intent, then how they intended later generations to go about interpreting the text should be the crucial inquiry. Did the Framers or Ratifiers intend us to interpret "broadly" or "narrowly"? Even more to the point, did they wish us to

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The System of Corporate Diversity Litigation: Method and Implications

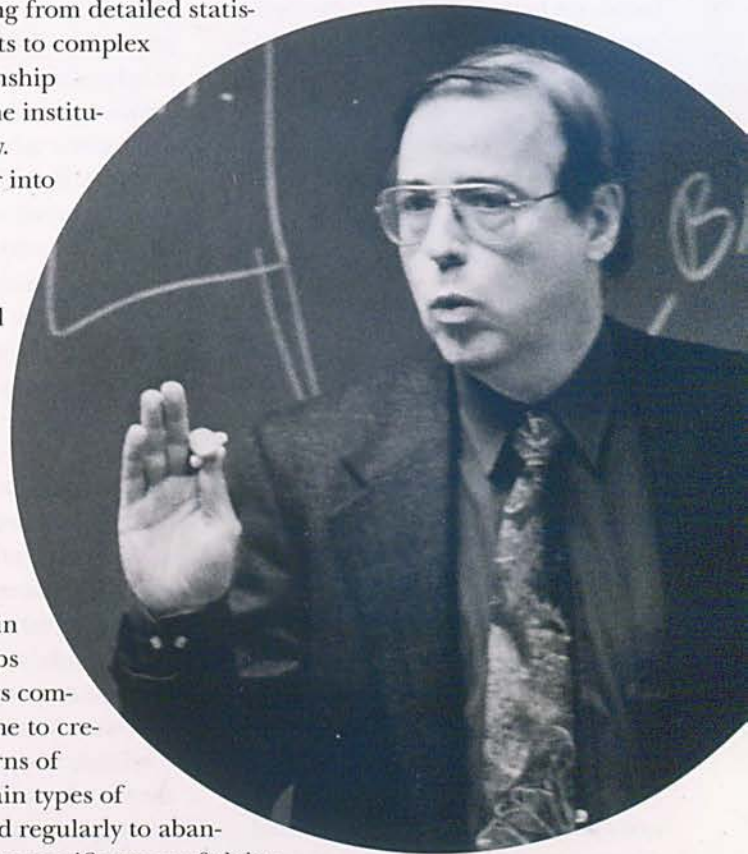
By Professor Edward A. Purcell, Jr.

For more than a century professional scholars in law, history, and the social sciences have sought to discover how the political and social worlds “really worked” and to explore the relationships between law and society. Following the lead of Roscoe Pound at the beginning of the twentieth century, American legal scholars came to refer to the distinction between “law in books” and “law in action.” Much illuminating scholarship has resulted, and the past several decades have added many important works ranging from detailed statistical studies of judicial dockets to complex interpretations of the relationship between social change and the institutions and doctrines of the law.

This book inquires further into the dynamics of the law in action, using a synthesizing, ecological approach to the study of law, society, and legal history. It explores the relationships between potential and actual legal claims on the one hand and, on the other, the social and legal factors that determined how parties disputed and disposed of those claims. The approach examines the ways in which the diverse relationships among those various elements combined and interacted over time to create and alter the rough patterns of behavior through which certain types of individuals and groups tended regularly to abandon, settle, and litigate certain specific types of claims.

The book revolves around an analysis of what it calls a social litigation system. Such a “litigation” system is clearly narrower than a “claims disposition” system. It concentrates on “legal” patterns in the disputing process rather than on more sweeping “social” patterns of claims disposition. But the book nevertheless describes and examines a social litigation system. It attempts, in other words, to identify the ways in which more comprehensive claims-disputing and disposition patterns helped determine liti-

(Continued on page 15)



be bound by their intent or not? The drafters might quite wisely have held that they could not possibly resolve all future questions and so they – and we – would have to rely on the good judgment of later generations to work out matters case by case. Unfortunately, we know next to nothing about what the Framers thought of this question of their intent. And we know nothing whatsoever about how the Ratifiers felt.

There are two other, related difficulties over interpreting according to original intent. One is that on many issues of utmost concern to us, the Framers had no intent because they did not conceive – could not have conceived – the problems that would confront this astonishing American people, whose technology and economy would transform the world.

A second difficulty is that the Framers may have been mistaken in their “intent” – mistaken, that is, in believing that the words they chose embraced their intent. This is not as paradoxical as it may seem. Suppose, as Thomas Jefferson once wrote, “all men are created equal.” Suppose, further, that these words had been placed in the Constitution (in fact, of course, they were not put there). Would it have refuted a slave who sought emancipation to say, “Well, Jefferson didn’t really intend to free the slaves”? Perhaps he personally did not so intend, but it would snap the Constitution beyond repair, or at least utility, to argue that the phrase “all men are created equal” (or some similar set of words) does not apply to slavery. If Jefferson had focused on the gulf between his noble

sentiment and his inconsistent behavior in holding slaves, he might have yielded to the inconsistency and either have changed his phrase or manumitted his slaves. If you do not focus on the discrepancy, it is entirely possible to hold inconsistent positions, but one of them must surely be mistaken.

We engage in logical inconsistencies all the time – when, for example, we rail against taxes but expect the government to provide us with ever-growing services.

So it is not enough to ask, “What did the Framers intend about Issue X or Problem Y?” We must ultimately ask what they intended by the phrases that purport to govern those issues and problems. Jefferson might truly have intended, had he thought grandly about it, that all persons are truly created equal and that

someday a more humane world would act upon that knowledge, interpreting the phrase for what it really means, and not as he, a prisoner of his age, circumscribed it.

By the same token, we ought to be equally suspicious of arguments that the Constitution really does mean anything that people in power, justices of the Supreme Court, wish it to mean. It is no more sensible to permit Justice So-and-So to say that white means black than it is for Framer So-and-So to say that black means white. If we are to have any sort of ordered society, we must live under a Constitution whose words are neither shrunk to an invisible point nor stretched along an infinite line.

To discuss any single approach to interpreting the Constitution is to falsify historical reality. Few cases favor one

way and exclude others. Nor do justices often announce that they are following one approach or another. Their interpretive methods are usually implicit, hidden, masked. Moreover, the entire enterprise of interpreting the Constitution is at best ramshackle. Because precedents are connected in books, and now in data banks, we can observe the “evolution” of constitutional thought through a complete fossil record. Every constitutional decision ever published by the United States Supreme Court sits in all but the most

modest law libraries, and each is instantaneously retrievable today by anyone with a computer, a modem, and the funds to go on line. This lush growth of the constitutional forest means that the Court must often engage in attempts to reconcile the unreconcilable,

fitting together a pattern of cases decided at different times for different reasons by different justices with different agendas.

We return, therefore, where we began. There can never be a fixed, unyielding meaning to the Constitution for the same reason that the Constitution endures. It remains a charter of shimmering truths and obscurities that will ever be tailored to our own purposes, no matter how much genius is devoted to proving that the One True Way should yield some other result. ■

“Unfortunately, we know next to nothing about what the Framers thought of this question of their intent...”

gation practices. The book assumes that any understanding of litigation patterns requires some understanding of the broader claims-disputing and disposition system of which they are integral parts.

The concept of a social litigation system directs attention to the functional interrelationships among several factors. First, it begins with the basic social fact that drives the practices of both the formal and informal legal systems, human conflict. Its initial focus is not on doctrines or institutions but on the efforts of individuals and groups to achieve certain specific goals, and it accordingly underscores the pivotal importance of the social characteristics of adversary parties. Second, it concentrates on social and historical context, recognizing that the influence of that context is complex, multiform, and often indirect. It is sensitive to the power of that context to alter the practical significance of legal rules and institutions, whether or not those rules and institutions themselves formally change. Third, it stresses the importance not just of cases but also of claims, not just of formal suits filed in the judicial system but also of actions taken anywhere that attempt to dispose of grievances that could give rise to legal claims. The formal law helps contour the informal legal process, but the latter is both more comprehensive and more vital. It surrounds, limits, and shapes the oper-

ation of the formal legal system. Fourth, the concept of a social litigation system emphasizes that the legal system is not merely an institution that maintains norms and enforces order but is also one that allows and to some extent encourages diverse results through the scope it gives to the opportunistic, methodical, creative, and ruthless efforts of private parties to exploit its every feature and nuance. It assumes that the formal purposes and theories that purport to explain rules or practices may well explain neither why or how parties in fact use them nor what actual social results they bring.

Finally, the concept of a social litigation system highlights the complex and unavoidable interplay among the formal elements of the legal system itself. It stresses the importance of forum options, for example, recognizing that for diverse types of litigants alternative courts are often far from equivalent, regardless of their formal standings as jurisdictional equals purportedly applying an identical substantive law.

It also stresses the ways in which procedural rules modify, restrict, or even negate rules of substantive law. It assumes that substantive rules, despite their apparent clarity or breadth, may mean little or nothing, or perhaps something quite surpris-

ing, when seen in the functional litigation contexts where they are, or are supposed to be, controlling.

The concept of a social litigation system also highlights the changing dynamics between the formal elements of substance and procedure, the law's two classic internal divisions. The

concept incorporates the assumption that we cannot begin to understand the practical significance of the former until we recognize the relevant circuitry, flexibility, and multiformity created by the latter. It also assumes, of course, that we cannot begin to understand the latter – procedure “in the abstract” – without understanding both the substantive rules to be enforced and the social context in which the enforcement would occur. The concept of a social litigation system, in fact, gives to procedure a special prominence and brings it more fully within the scholarly effort to study law as a social and cultural phenomenon. ■

**“The formal law
helps contour the
informal legal
process, but the latter
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Reunion at ABA

The American Bar Association's Annual Meeting, held this summer in New York, was a wonderful opportunity for New York Law School alumni, faculty and students to participate in a range of activities at the week-long event.

New York Law School alumni from all corners of the country were reunited at the August 5th kick-off party, hosted by The Law School and the Alumni Association in the Ernst Stiefel Reading Room. Old friends were re-acquainted and new contacts made at the wine and cheese reception, which included tours of the Law School's new facilities.

On August 8th, The New York Law School was proud to co-host, with eight other New York law schools, a reception honoring the American Bar Association's Section on Legal Education and Admissions, which is celebrating the centennial of its founding. The event was held in the magnificent 44th Street home of the Association of the Bar of the City of New York. ■

Membership has its Privileges

The Williams Club, located at 24 East 39th Street in Manhattan, is now offering affiliate memberships to New York Law School alumni, with entrance fees cut in half for applications received by year's end. Re-opened in mid-1988 after a multi-million dollar reconstruction,

the Williams Club offers one of the nicest places in New York for meeting friends, elegant dining (during the week), and lodging. For information on membership fees and to receive an application, please call Michael Smith of the Williams Club, at 212/697-5300. ■

Former Controller Named to Board of Trustees

Former New York State Controller Edward V. ("Ned") Regan, currently President of the Jerome Levy Economics Institute of Bard College, has been elected to the Board of Trustees of The New York Law School.

Mr. Regan, who received his BA from Hobart College and his JD, cum laude, from the State University of New York School of Law, is a member of the U.S. Competitiveness Policy Council and the Board of Directors of the Oppenheimer Fund. He was Erie County Executive before beginning his 14-year tenure as Controller in 1979. ■

A Lovely Afternoon Was Had by All

The Chappaqua home of Mr. and Mrs. Richard E. LaMotta '75 was the gracious setting for a September 12th lawn party for Westchester, Rockland and Connecticut alums. Wine and good cheer flowed as nearly 60 Law School grads spent a lovely Sunday afternoon socializing and renewing old ties with their alma mater. Dean Harry H. Wellington and Associate Dean Harriet Inselbuch were among the very special guests who turned out for the event. ■

Well, Sfuzzi Me...

That was the cry heard at August 26's elbow-to-elbow Second Annual Recent Alumni (Classes 1989-93) Gathering, held at Sfuzzi's Restaurant amidst the towering palm trees located in the Winter Garden of Manhat-

tan's World Financial Center. The New York Law School Alumni Association's Recent Alumni Committee met and greeted old friends and new, with a special welcome to the class of 1993. Associate Dean Harriet Insel-

buch and Alumni Association President Kathleen Grimm, recently named by Mayor David Dinkins as Acting Commissioner of the Department of Finance, came by to greet the recent grads. Committee Members Augie Ribeiro '89, Dennis Pahl '89, Jeff Berkman '89, Valerie Calistro '89, Jason Oshins '91 and Erik Jacobs '92 report that over 200 New York Law School alums turned out for the event. ■



Two Alumni Approaches Support First Amendment

One New York Law alumnus has founded a publishing company to push the limits of censorship itself, while another has invented a device allowing parents – rather than legislation – to control electronic information entering their homes.

Joseph Mauro '93, along with his English professor brother, Paul, are the successful creators of First Amendment Publishing Inc., which was initially begun to protest efforts by Nassau County, N.Y., authorities to outlaw trading cards featuring what authorities considered to be inappropriate themes. The Mauro brothers' first tongue-in-cheek effort to confront such censorship, a set of cards titled "Sex Maniacs", however, sold out virtually overnight, as did a related venture in the form of a comic book featuring Amy Fisher and Joey Buttafuoco in a "he said/she said" format. "We developed that format," Mr. Mauro told the Chicago Tribune, "because we didn't know who was telling the truth." The issue sold 70,000 copies in two weeks, leading to distribution of it and future products in more than 40 countries.

These ventures have been followed with two newer sets of trading cards, "Sex Maniacs II" and "Election '92," as well as further comic books featuring Woody Allen/Mia Farrow and, under a special agreement with Gennifer Flowers,

an issue covering her alleged romance with then-Governor Bill Clinton.

"Frankly, before entering New York Law School, I wasn't particularly interested in the Bill of Rights," Mr. Mauro says. "We started First Amendment Publishing to push the limits of tolerance in a medium that is particularly vulnerable to censorship attempts."

Another area raising potential First Amendment issues is the concern of some parents and regulators that "warning labels" preceding many television programs may not be sufficient and therefore certain forms of programming should be banned. Alumnus John W. Olivo, Jr., of the Class of 1987 has been trying to interest the Federal Communications Commission in a high tech solution to the problem.

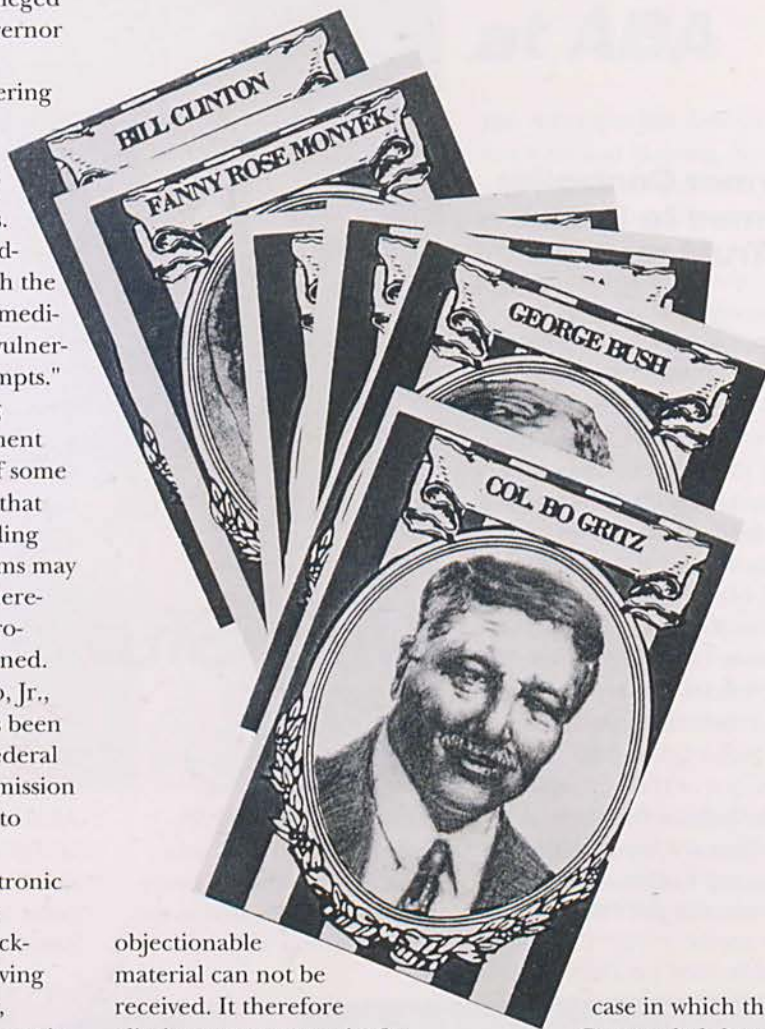
By attaching an electronic signal to programming that would trigger a "lock-out" device in the receiving or playback equipment, Mr. Olivo's technique permits the owner/operator of the device – most likely a parent – to set up any electronic device in the home, whether broadcast or cable television or radio receiver, VCR or audio tape recorder, or even the telephone, so that

objectionable material can not be received. It therefore eliminates any necessity for banning or censoring such material at its source.

With an undergraduate degree in electronics, Mr. Olivo first submitted his technology to the FCC in 1986 while a student at The New York Law School and a member of the Media Law Clinic. The technology was presented to the United States Court of Appeals for the Second Circuit in a 1988

case in which the Court ruled that the

FCC had failed to give adequate consideration to such technology, and only after doing so could the government fulfill its "heavy burden of demonstrating that the compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression." ■



William P. LaPiana Named the Rita and Joseph Solomon Professor

Dr. William P. LaPiana, a member of The New York Law School's full-time faculty since 1987, has become the first Rita and Joseph Solomon Professor of Wills, Trusts and Estates.

The Chair is named in honor of Dr. Joseph Solomon '27, a partner in the firm of Gallet, Dreyer & Berkey and an Honorary Trustee of The New York Law School, and his wife Rita.

Professor LaPiana has received the BA (1973), MA (1975), JD (1978) and Ph.D. (1987) degrees from Harvard University. He was formerly a member of the adjunct faculty at Benjamin N. Cardozo School of Law, an associate at Davis Polk & Wardwell, and an Assistant Professor of Law at the University of Pittsburgh.

The most recent of his extensive writings is the book, "Logic and Experience: The Origin of American Legal Education," published this year by Oxford University Press. Professor LaPiana presently teaches Estate Planning, Federal Taxation of Gifts and Estates, Legal History, Property, and Wills, Trusts and Future Interests. He will deliver the 4th Annual Solomon Lecture "Parental Rights in the Non-Marital Child and the Rise of Patriarchy" on December 1, 1993 beginning at 4:30 p.m. in the Ernst Stiefel Reading Room. Alumni and friends are invited to attend. ■



2nd Century Campaign UPDATE

Second Century Campaign Update

The 1992/93 fiscal year, which ended June 30, brought some very nice surprises, set a few records, and helped bring New York Law School that much closer to its Second Century Campaign goal of \$16 million. A few of the highlights:

- A record of 2,782 gifts were received by the School, which is an 11 percent increase over the number of gifts received in the previous year. Of this, 2,462 were from alumni - a ten percent increase from the previous year. "Percent participation in giving rose to 27 percent, a new high, but still short of our ultimate goal," said Associate Dean Harriet Inselbuch.
- Foundation giving also set a new record, almost dou-

bling from last year's total. This was largely due to the \$200,000 challenge grant from the Kresge Foundation. ■ New York Law School's two major givers clubs both had new records.

The John Marshall Harlan Fellowship (those who contribute \$1,000 or more) had 210 members, compared with 192, which was the record set last year.

The Theodore Dwight Fellowship, those individuals who contribute \$500 or more, grew to 63 members from 51 in the previous year. Ten DWIGHTs from last year became Harlans this year.

■ The Class of 1992 set a record when 36 percent of the class, or 148 members, made a gift to their alma mater. No other class, with the exception of our Old

Guard alumni from small classes, has ever had such a high level of participation. We offer a special "tip of the hat" to these alumni.

All in all, the results were very encouraging. Total dollars received for the 1992/93 fiscal year equaled \$1.496 million. This total was added to the Second Century Campaign, which is the five-year \$16 million capital campaign.

As of the end of the fiscal year, the Campaign total of gifts and pledges stood at \$13,177,000, representing 82 percent of the \$16 million goal. Of this total, almost 46 percent came from alumni, and another 26 percent from friends of New York Law School. To date, over \$10 million of this pledged amount has been collected. ■

Communications Media Center Sponsors Seminar on AT&T/McCaw Merger



Students, faculty members, business executives and academics crowded The New York Law School Faculty Dining Room on August 31st for a fascinating analysis of the issues surrounding the proposed merger of AT&T and McCaw Communications. Sponsored by The New York Law School's Communications Media Center (CMC), the seminar, entitled "A Critical Examination of the AT&T/McCaw Merger," brought communications executives, analysts and legal experts together to discuss the controversial merger. Moderated by Professor Eli Noam, Director of Columbia University's Columbia Institute for Tele-Information, the event was attended by over 80 people.

The panel included Michael J. Morrissey, General Attorney for AT&T; John H. Chapman, Chapman, Moran, Hubbard & Zimmerman; Robert Lewis, General Counsel, NYNEX Mobile;

Thomas Aust, V.P. Investment Grade Research, Citicorp Securities; and New York Law School Professor Rudolph Peritz, whose views on the anti-trust implications of the merger paralleled concerns raised by legislators and regulators in Washington. CMC's founding director, Professor Michael Botein, had aired his views on this subject in an Op-Ed piece in The New York Law Journal, in newspapers nationwide, and on CNBC. ■

Dean Simon in Connecticut

Former New York Law School Dean James F. Simon was the inaugural speaker at the first roundtable luncheon sponsored by the Connecticut Chapter of the Alumni Association held on August 26th in Greenwich. Dean Simon captivated the guests, including alums and students, with his discussion of "The Supreme Court in Transition." Dean Simon, currently on sabbatical, is writing a book on the Rehnquist Court for Simon & Schuster. Norine Krasnigor '85, and Lloyd Hull '51, chapter co-chairs, hosted the luncheon. ■



Distinguished Bench Sits for 15th Froessel Competition

Described as "arguably the best and most distinguished final round bench of any moot court competition in the country," more than sixty sitting judges heard the advanced rounds of the 15th Annual Froessel Intramural Moot Court Competition, including, for the final round, Hon. Frederic Berman of the New York Supreme Court; Hon. Leonard Garth, Hon. Morton Greenberg and Hon. Elsworth Van Graffelin of the United States Court of Appeals; Hon. Sterling Johnson, Jr., Hon. Michael Mukasey and Hon. John Sprizzo of the United States District Court; and Hon. George Bundy Smith of the New York Court of Appeals.

The winner of the final round and Best Oralist was Debra Todres, with Michael Pagano the runner up. Lydia Payne and Robert Raymond were the other two finalists. Winners of the award for Best Brief were John Estes and Paul Daugherty. Winners of Best Team in the preliminary rounds were Laurie Mayer and Carlie Draper and Best Oralist was Ms. Todres.

Winners each received the

\$100 Morris Orland Moot Court Award, set up in 1985 by alumnus Lee G. Zimet '85 in memory of his grandfather, Morris Orland.

Planning and work to make the Froessel a success began last April, under Co-

chairs Genevieve Felix and Ed Jakub. Fact Pattern and Bench Brief Co-authors were Gary Axisa and Arnold Levine, with Michael Cifelli contributing to the Bench-Brief. The Faculty Advisor for Moot Court is Professor Gerald Lebovits. ■

2nd Century Campaign UPDATE

John Ben Snow Memorial Trust Once Again Makes a Major Gift to Scholarship Support at New York Law School

The John Ben Snow Memorial Trust approved an additional grant of \$50,000 to continue the Snow Scholars Program at New York Law School. These funds are given to first-year students based on financial need and academic excellence. The Snow Scholarship was created in 1977, and has benefited dozens of students through the years.

The John Ben Snow Memorial Trust also approved a \$7,500 Challenge Grant to the Law School. Each year, past recipients of the Snow Scholarship are asked to contribute to this challenge fund, which the foundation matches dollar for dollar to the limit of \$7,500. Former Snow Scholars have risen to the challenge each year, and the monies raised in this way are put into the John Ben Snow Challenge Endowment Fund, which now has a balance of \$84,937, further adding to New York Law School's Scholarship Endowment.

Total endowed scholarships at New York Law School have grown by more than 75% in the last four years from \$1.7 to \$2.8 million dollars. Anyone interested in creating a named endowed scholarship can get more information from the Office of Development & Public Affairs. ■

1949

Stanley B. Doyle, Jr. will be the new President of the Fourth U.S. Cavalry Association in Springfield, Illinois.

1957

Ivan Fox, a Professor of Law at Pace University Law School, is the author of the textbook, now in its 15th edition, *Business Law and the Legal Environment*, published by Southwestern Publishing Company. He also conducts his own CPA review course in New Jersey.

Guy R. Vitacco was appointed Vice-Chair and Chair of the State Solo Conference Project of the Sole Practitioners and Small Firms Committee in the General Practice Section of the American Bar Association. The General Practice Section represents approximately 14,000 lawyers throughout the nation.

1958

Joseph N. Friedman is an officer and of counsel for First American Title Insurance Company, where he is involved in title work in New York and nationally.

1960

J. Bruce Llewellyn, President and CEO of the Philadelphia Coca-Cola Bottling Company, was the keynote speaker at

Dowling College's commencement exercises at which Masters degrees in Business and Education were conferred. He was awarded an honorary Doctor of Commercial Science degree.

1963

Justice Milton L. Williams, Deputy Chief Administrative Judge of New York City Courts, delivered the commencement address at St. John's University's 123rd Commencement Exercises. At the ceremony he received an honorary Doctor of Laws Degree from the Rev. Donald J. Harrington, C.M., President of St. John's University.

1965

Joseph Santosuosso joined Title Agency of New Jersey Inc. as vice president and counsel in May.

Alan M. Grosman was appointed editor of the ABA Family Law Quarterly in August 1993.

1967

Joseph D. O'Neill appeared in a debate sponsored by the New Jersey State Bar Association entitled "The Fruits of Their Crimes: The Son of Sam Debate" with the First Assistant Attorney General of

the State of New Jersey and the Assistant Prosecutor of Cape May County on May 22, 1993.

1973

Judge Lorin Duckman delivered the Law Day address on behalf of the judges of the Bronx Criminal Court in May 1993.

1974

Judith A. Bresler joined Swann Galleries, an auction house specializing in rare books and manuscripts, as house counsel and head of business development.

Steven A. Harris was installed as President of the North Palm Beach County Florida Bar Association. He also appeared in Jupiter Community Theater's production of *The Odd Couple*.

Carol Kriesberg, Vice President of the NYLS Alumni Association and solo practitioner, announces her engagement to William Sledge.

1977

Jay M. Newman and his wife Stephanie Newman have recently opened a private practice in Manhattan specializing in corporate, financing, real estate, trust and estates, and estate planning matters.

Daniel R. Varona is General Counsel, Secretary & Chief Administrative Officer managing operations at Companion Life Insurance Company, a mutual of Omaha subsidiary in Rye, N.Y. He lives in Mahopac, N.Y. with his wife and three children.

Douglas S. Wong was appointed by Mayor David Dinkins as a criminal Court Judge for a

ten-year term. He also recently received a Pro-Bono Service Award from the Association of Arbitrators.

1978

Deborah M. Nolan is at work on a book and is teaching English at St. Peter's college while raising her three children.

1979

Jonah Triebwasser recently delivered a lecture entitled "The Ten Commandments of Cross-Examination" at Cornell University to the legal staff of the N.Y. State Department of Environmental Conservation. He is Senior Attorney with the Department and a member of the adjunct faculty of Marist College in Poughkeepsie, New York.

1980

Jeffrey E. Jacobson served as an ABA Young Lawyers Division Delegate from New York State at the National Assembly of the YLD of the American Bar Association. At the conference, he took part in a panel discussion on the fundamentals of intellectual property.

1981

John S. Woodward and his wife Pamela announce the birth of their second child, Lucas Samuel, on May 15, 1993.

1982

Carol M. Bast joined the University of Central Florida in Orlando, Florida as an Assis-

tant Professor in the Criminal Justice and Legal Studies Department.

Margaret M. Enloe announces the birth of her daughter Laura Elizabeth on March 13, 1993.

Charles Leanness and his wife Christina announce the birth of their daughter, Caterina Emma, on June 11, 1993.

1983

David M. Katz became associate counsel specializing in state securities law matters to the firm of Simpson Thacher & Bartlett.

Suzanne N. Patnaude announces the birth of her twin daughters, Nicole and Christine Kosmider, born on October 30, 1991.

Robert J. Smith has opened his own practice in Manhattan specializing in civil litigation and estate planning.

1984

Tom Carr and **Theresa Szeliga** '83 gave birth to their first child, Sean, on August 11, 1993.

Denise Lanchantin and her husband, Philip Dwyer, gave birth to their first child, Kevin, on August 11, 1993.

Michael Miller accepted the New York State Bar Association's Award of Merit on behalf of the New York County Lawyers' Association for NYCLA's Safe Housing for Children Project.

Thomas V. Panteles recently opened his own practice in Mineola concentrating on zoning and land use planning.

Philip R. West has joined the Washington D.C. firm of

Step toe & Johnson and will specialize in international tax matters.

Mitchell G. Williams recently became a partner at Thacher Proffitt & Wood where he has been a member of its real estate group for nine years.

1985

Norine Krasnogor recently appeared on cable television and was interviewed by several newspapers on immigration, naturalization, and consular law issues.

Barbara Sirotkin opened a private practice in matrimonial law in Great Neck, N.Y. She also joined NYLS' adjunct faculty this fall.

1986

Susan M. Cohen practices corporate and securities law in North Bergen, N.J.

Marc Dobin joined the firm of Boose Casey Ciklin Lubitz Martens McBane & O'Connell in West Palm Beach, Florida. He will be concentrating on broker-dealer litigation and will be working with Lonnie Zangrillo, NYLS class of '89.

Lawrence Salvato announces that after leaving the Appeals Division of the New York City Corporation Counsel's Office, he has opened an office for the private practice of law and will continue to concentrate in the area of appellate litigation.

1987

Kenneth Brown left the firm of Lord Day & Lord and joined Haythe & Curley in September 1992.

1988

Michael A. Hardy has become special counsel at the firm of Edmonds, Torres, Martinez & Mazza, joining fellow NYLS alumna Cornell Edmonds '84, Alberto Torres '86, Diana Martinez, '88, and Anthony Michael Mazza, '90.

Douglas A. Morgan is employed with the Boston law firm Morrison, Mahoney & Miller defending doctors and hospitals in medical malpractice actions and other health litigation. He announces the birth of his daughter, Rebecca Dorothy, on October 8, 1992.

Janet A. Sullivan and her husband Sean Sullivan, NYLS class of '87, gave birth to a daughter on October 2, 1991.

1989

James W. Faber recently opened a practice concentrating on tax law in Denver, Colorado.

Todd A. Gordon joined the entertainment law firm of Jacobson & Colfin (Partners Jeffrey E. Jacobson and Bruce E. Colfin, both NYLS class of 1980.)

Joseph Sofer is practicing intellectual property law as an associate at Weil Gotshal & Manges.

1990

Pamela DeCicco and **Eric J. Dale** '89 were married on March 6, 1993. Pamela is a litigation associate with Weil Gotshal & Manges and specializes in adoption and

family law. Eric structures and manages real estate and business investment ventures and practices business and bankruptcy law.

Denise Golden and her husband Kenneth Rosenblum gave birth to Lawrence Nathan in October 1992. She is on child care leave from the New York City Law Department.

Elizabeth J. Grossman has joined the Dallas-based firm of JuriLink International Corporation as a trial media consultant. "JuriLink" specializes in 3D-computer animation and other forms of demonstrative evidence for an international clientele.

Alan J. Jacobs has been promoted to Editor-in-Chief of Clark Boardman Callaghan's New York Publishing Center. The New York center publishes treatises, computer diskettes, and CD-ROMS in the legal specialty areas of securities, intellectual property, immigration, environment, criminal, health, civil rights, real property, zoning, entertainment and sports law.

Joseph M. Palmiotto opened a solo practice specializing in immigration, personal injury, and general practice in May 1993.

1991

Robert J. Giglio recently joined the commercial real estate firm of Galbraith Riverbank as Service Managing Director, responsible for

directing the firm's office leasing, management and sales division.

Jamie McDonald and Paul Ryan announce their engagement.

Scott L. Wiss was married to Christine Fasano on September 26, 1993 in Westbury, Long Island. They will live in Massapequa Park.

1992

Michael D. Schlossman is a Republican candidate for City Council for the Sixth Councilmanic District (Upper West Side of Manhattan).

1993

Michael Brady and his wife announce the birth of their son, Sean, on June 28, 1993.

Glenn Gavan is a law clerk to the Honorable Elaine Davis, Presiding Criminal Judge, N.J. Superior Court, Hudson County.

Bruce D. Katz is an associate at the law offices of David M. Ettinger '63.

Deborah Metzger is a judicial law clerk to Mac D. Hunter, J.S.C, Superior Court, Union County, N.J. She is engaged to marry James Mulney in March 1994.

Delvis Valdes has opened a real estate law office in Brooklyn's Sunset Park area.

In Memoriam

In September, The New York Law School community lost former **Dean Daniel Gutman**, who served from 1959 to 1968. During his tenure, Dean Gutman initiated the Law School's first course devoted to the development of writing skills for lawyers.

During his distinguished career, Gutman was an Assemblyman and State Senator from Kings County from 1938 to 1943. He was then elected justice of the Municipal Court, where he later founded a night court for small claims. From 1954 to 1958 he was counsel to Governor Averell Harriman of New York, during which he was involved in negotiations with the Waterfront Commission and the Longshoreman's Association. After serving as Dean of The New York Law School, he supervised a Ford Foundation project which created educational programs for new members of the judiciary.

Jules Shank, class of 1931, in June 1993.

Francis X. McGuirk, class of 1934, on August 5, 1993.

George W. Madison, class of 1952, July 14, 1993.

Lothar Nachman, class of 1953, on June 11, 1993.

Ronald K. Sysak, class of 1964, on June 10, 1993.

Kevin M. Colleary, class of 1985, on May 5, 1993.

Martin Greene, on June 14, 1993. Mr. Greene was an Adjunct Professor of Law at The New York Law School from 1975 to 1990.

Nelson Seitel, on July 14, 1993. Mr. Greene was an Assistant Professor of Law from 1974 to 1978, and an Adjunct Professor from 1978 to 1988.

Professor Michael Botein was interviewed on the CNBC cable channel about the Bell Atlantic decision of Tuesday, August 24, in which a federal district court in Virginia struck down the statutory ban on the Bell Regional Holding Companies (local exchange carriers) offering cable television service. Also, the New York Law Journal published his editorial on the AT&T-McCaw Merger on August 30, 1993. He also recently participated in a conference on "Competition and Cooperation in Telecommunications," sponsored by the European Commission in June in Rome. He moderated a panel on policy perspectives and another on technological and industrial developments.

Adjunct Professor Judith Bresler delivered a lecture on "Artwork: Expert Opinions and Liabilities" to personal property appraisers on June 5, 1993 at a joint seminar presented by the Appraisers Association of America and New York University's Appraisal Studies Program, at New York University.

Professor Aleta Estreicher's article "Beyond Agency Costs: Managing the Corporation for the Long Term" was published at 45 Rutgers Law Review 513 (1993).

Professor Keri Gould's article, "Turning Rat and Doing Time for Uncharged, Dismissed or Acquitted Crimes: Do the Federal Sentencing Guidelines Promote Respect for the Law?" is slated for publication in the 1993 symposium issue of the New York Law School Journal of Human Rights. She also recently signed a contract with the New York State Office of Mental Health to write the book, Model Judicial Orders for Mental Hygiene Law Cases, and the screenplay for the accompanying informational video. In May, she was a planning committee member and small group facilitator in a conference simulation presentation in the Clinical Legal Education Association Externalship Conference in McLean, Virginia. She also recently gave a presentation in the Mt. Sinai Hospital Forensic Psychiatry Lecture Series, "The Psychiatrist's Role in Mental Health Law Cases" and a presentation entitled "Representing the Mentally Disabled Client: The Initial Interview"

to the New York City Women's Bar Association. She is also co-chair of the conference to be sponsored on November 3rd by the Bar of the City of New York's Committee on Legal Problems of the Mentally Ill: "Beyond Scare Tactics: Implementing the ADA Provisions in the Employment of People with Mental Disabilities."

Professor Karen Gross lectured on Chapter 11 at a meeting of the New York State Bar Association in June. On September 23, 1993, she gave a keynote address entitled "Corporate Pre-Bankruptcy Planning" at the Minnesota State Bar Association's bankruptcy program. She was also recently appointed to the Bankruptcy Committee of the Association of the Bar of the City of New York. This month she gave a series of lectures at the National Bankruptcy Judges Conference, one of which focused on "The Impact of Race and Gender on Bankruptcy Law Practice." In addition, she led an ABA Task Force meeting on exclusivity in Chapter 11 and proposed bankruptcy legislation in October. Her most recent publication is the lead article entitled, "Justice Thurgood Marshall's Bankruptcy Jurisprudence: A Tribute" in the Fall 1993 issue of the American Bankruptcy Law Journal.

Professor Randolph Jonakait spoke to a conference of federal magistrates in Chicago about recent developments in federal evidence law in July. In August he spoke to the criminal justice section at the annual American Bar Association conference on the Supreme Court's recent Sixth Amendment decisions. His article "Insuring Reliable Fact Finding in Guidelines Sentencing: Why Not Real Evidence Rules?" was published at 22 Capital University Law Review 31 (1993). The piece was part of a symposium on Current Trends of the Confrontation Clause.

Professor Arthur Leonard was quoted in Newsweek's May 24, 1993 article on the debate over the legal issues surrounding gay marriage. He was also quoted in the June 1, 1993 issue of The Advocate regarding the manner in which judicial employees of the Clinton administration may affect gay and lesbian rights. His article, "Sexual Orientation and the Workplace: A Rapidly Developing Field," will be published in the September 1993 issue of the Labor Law Journal. He was prominently quoted in a report on an important new decision concerning employers' obligation to make "reasonable accommodation" for employees with AIDS to be transferred to a sister facility. The quotation appears in the July 23rd issue of AIDS Policy and Law. His letter to the

tor on the subject of gays in the military was published in the August 20th issue of The Washington Blade. An abridged version of the letter was also published in the September 7th issue of The Advocate.

Professor Jethro K. Lieberman's book, *The Litigious Society*, originally published in 1981 by Basic Books, was recently issued in Japanese by Hoken Mainichi Shimbunsha, Ltd.

Professor Richard Marsico's article "A Guide to Enforcing the Community Reinvestment Act" was published in Volume 20 (1993) of the *Fordham Urban Law Journal*. He was also a guest on the radio show "Night Talk", on August 26, 1993 where he was interviewed about lending discrimination and how community groups might work to eliminate it.

Adjunct Professor Martin Minkowitz's article titled "Insurance Regulation- Is the Consumer Protected?" appeared in the May 1993 issue of the *Brooklyn Barrister*, published by the Brooklyn Bar Association. He also co-authored with Joel Cohen the

article "Commercial Kick-backs: Limiting Corporate Criminal Exposure" which appears in the 1993 Annual Meeting Edition of the American Bar Association's *Corporate Counsel*.

Professor Michael Perlin's book *The Jurisprudence of the Insanity Defense* will be published in December of 1993 by Carolina Academic Press. Another book, *The Law and Mentally Disabled Persons*, will be published this year by the Michie Company. He also recently submitted for publication the fourth pocket part to his treatise, *Mental Disability Law: Civil and Criminal*. Two of his articles were published: "Decoding the Right to Refuse Treatment", 16 *International Journal of Law and Psychiatry* 151 (1993), and "Understanding *Zinerman v. Burch*", in 3 *Psychiatric Malpractice Risk Management*, chapter 6 (1993). He recently presented the paper "Deinstitutionalization, Homelessness, and the Roles of Lawyers: Deconstructing the Establishment Attacks" at the American Psychiatric Association's annual conference in May 1993. He presented "Medication Issues of the '90's" and "Federal Mental Health Cases of the Past Decade" to the N.J. Department of the Public Advocate's annual training session, and "The Sexual Interaction Rights of Institutionalized Mental Patients" at the University of South Florida's Visiting Scholar/Colloquium series in

April 1993. In March he presented "Reading the Supreme Court's Tea Leaves: The Meaning of the 1990 and 1992 Terms to Forensic Mental Health Professionals" at the California Forensic Mental Health Association's annual conference.

Professor Donald P. Rothschild assisted the Governor's Commission on Disabilities in June in training State officials from the administrative departments on the use, procedures and techniques in Alternative Dispute Resolution under the Americans with Disabilities Act. Over the past year he has developed and participated in 17 conferences on ADA Title I (Employment; II (Public Sector); III (Public Accommodation) provisions of ADA to Rhode Island, Massachusetts and Connecticut State and municipal officials, educational institution personnel, construction industry and other private sector management. He was also recently appointed to the Mediation Panel of Lex Mundi, a non-profit association of selected international law firms.

Professor Ross Sandler filed an amicus brief on August 20, 1993, in the Appellate Division, First Department, on behalf of The City Club of New York, Citizens Union of The City of New York, and Cit-

izens Housing and Planning Council of New York in the case of *Silver v. Dinkins*. The brief supports the City and Mayor Dinkins, arguing that the City officials did not violate new City Charter provisions on the fair distribution of city facilities. The petitioners in the Article 78 proceeding had argued that the City did not go far enough in its analysis and unfairly sited Sanitation and Department of Health garages on Piers 34 and 35 on the East River south of the Williamsburg Bridge. The case was argued on September 10, 1993. In addition, the recent DOI report on the PVB scandal mentioned Professor Sandler. In the testimony by the Lockheed lobbyist he was described as a person who would not work with them and their strategy involved getting around his opposition.

Adjunct Professor Ernst Stiefel was elected as a member of the European Academy of Sciences and Arts at Salsburg University in August 1993.

Professor Nadine Strossen was a panelist at the Triannual Conference of the Federal Judges Association on "Appointment and Confirmation of Federal Judges-Does the Process Work the Way it Should?" Panelists included Boyden Gray, James Kilpatrick, Linda Greenhouse, Nina Totenberg and Gary McDowell. She spoke at a press conference covered by CNN at the U.S. Congress in support of the proposed Civil Asset Forfeiture Reform Act of

1993. She was interviewed on Court TV's Prime Time Justice program about race and gender discrimination in jury selection and on CBS Radio on dress codes in public schools. She also commented on TV Violence on National Public Radio affiliate WNYC. She addressed similar issues at The Industry-Wide Leadership Conference on Violence in Television Programming, a panel discussion sponsored by The National Council for Families & Television. She appeared on Crosswalk TV's "The First Amendment on Campus: What Price Academic Freedom?" with political leader Herman Badillo and feminist author Andrea Dworkin. On several C-Span programs, she participated in debates on Fourth Amendment issues and free speech and academic freedom issues. Her recent publications include "Regulating Workplace Sexual Harassment and Upholding the First Amendment-Avoiding a Collision" in 37 Villanova Law Review 757-785; and "Securing Civil Liberties from the Beltway to the Bible Belt" in Harvard Law Bulletin, June 1993. She debated writer Nat Hentoff about various civil liberties issues on the Dave McGinty Show on National Public Radio. The May 1993 ABA Journal contains her "Point and Counterpoint" exchange with writer Nat Hentoff on the topic of "Hate Crimes: Should They Carry Enhanced Penalties?" She was one of four featured

speakers including Republican Congressman Dick Armey of Texas, Nobel Laureate Milton Friedman and writer-humorist P.J. O'Rourke at a banquet on May 6 celebrating the opening of the new Cato Institute in Washington, D.C. In September, she lectured on women in law during Women's Week in Key West, Florida. Excerpts of the taped lecture will be included in a video documentary for colleges and universities. She was also interviewed on KMOX Radio's (St. Louis, Missouri) "Newsblock" show about prayer in public schools. Her recent publications include "Censuring the Censors of Free Speech" in The Chicago Tribune, September 2, 1993; and "Pro Bono Legal Work: For the Good of Not Only the Public, But Also the Lawyer and the Legal Profession," 91 Michigan Law Review 2122-2149 (1993). Her article "A Feminist Critique of 'the' Feminist Critique of Pornography," was published at 79 Virginia Law Review 1099-1190 (August 1993). Her article "The Constitutional Litmus Test" was published in the summer issue of The American Prospect. In its July issue, The Chronicle of Higher Education published her article "Legal Scholars Who Would Limit Free

Speech." In recent months, she also appeared on "Miller's Law" on Court TV, regarding the Supreme Court's decision in Wisconsin v. Mitchell, a case involving "hate crimes" laws, and on a Lifetime Television documentary regarding women's achievements and challenges. In Aspen, Colorado, she gave a public lecture on "Threats to Civil Liberties in the Clinton Era", which was carried on local TV and radio.

Professor Ruti Teitel's article "A Critique of Religion as Politics in the Public Sphere," was published at 78 Cornell Law Review 747 (1993). It was the lead article of the July '93 volume.

Adjunct Professor Jeremy Travis, who is Deputy Commissioner of Legal Matters for the Police Department of the City of New York, authored a report entitled "Rethinking School Safety: The Report of the Chancellor's Advisory Panel on School Safety," issued recently by Schools Chancellor Fernandez. Professor Travis was also Chairman of the Panel. The other panel members were Dr. Gerald Lynch, President of John Jay College, and Professor Ellen Schall of the NYU Wagner Graduate School of Public Service. The report recommends a fundamentally new approach to school safety, building upon the innovations of community policing and school-based management to form new

community-based strategies to reduce the levels of violence and disorder in and around schools. In addition, his article "Using Subpoenas to Obtain Police Records," was published in the New York Law Journal on May 21, 1993. Professor Travis received the New York County Lawyers' Association Public Service Award given in recognition of his distinguished service in the public sector. He also recently spoke at the Governor's Law Enforcement Forum on "Enforcement and Legislative Responses to Gun-related Violence."

Adjunct Professor Otto Walter had an article on the recognition of German limited liability companies for purposes of U.S. tax law published in the German Magazine "Recht der Internationalen Wirtschaft" (Law of International Economy).

The Office of Career Services would like to thank the NYLS alumni who participated in its programs during the 1992-1993 academic year.

The following alumni posted job listings with the Career Services Office last year:

Arthur Abbey '59
Richard Ashman '87
Harry Cummins '82
Herbert Deutsch '68
Michael Dym '88
Richard Finamore '72
James B. Fishman '79
Seymour Fuchsberg '68
John Gangemi '64
Ursula Gangemi '90
Robert Groezinger '86
Mark Gross '72
Antoinette Herman '81
Mark N. Jacobs '71
Robert Jacobs '80
John Jankoff '68
E. Christopher Johnson, Jr. '81
Simon Kogan '83
Ron Korybski '85
Charles Leanness '82
Larry Lonergan '92
Jay Maller '78
Jeffrey D. Mamorsky '72
Murry Mayer '60
Bernard Mazur '61
Frank Palillo '82
Michael Palillo '83
John Positano '85
Louis I. Posner '89
Barbara Rosenberg '89
Nicole Rossi '91
Vincent Rossillo '84
John Saraceno '92
Karen Schwartz '85
Michael H. Schwartz '82
Richard Stelnik '77
Neva Dayton Strom '91
Edward Tuozzo '78
Jonathan Wilkofsky '81
Fred Wistow '77

The following alumni acted as mock interviewers in our Summer Mock Interview Program:

Jeffrey W. Berkman '89
Barbara E. Champoux '82
Bruce A. Colbath '85
Cornell A. Edmonds '84
Harry J. Friedberg '62
Howard O. Godnick '86
Jackie L. Gross '88
Charles M. Guria
Arnold S. Klein '77
Carolyn M. Penna '84
Leslie J. Purificacion '91
Lori S. Sherman '90

The following alumni spoke on Career Services' Panels:

Commissioner Angelo Aponte '91
Quentin F. Atherley '81
Anne F. Aycock '91
Jeffrey W. Berkman '89
Wendy R. Berman '83
Lorin Duckman '73
John Dugan '76
Cornell A. Edmunds '84
Sherri L. Eisenpress '89
Steven T. Gee '91
David A. Gehn '92
Joseph Giampaolo '75
Christopher P. Giordano '93
John P. Grill '92
Kathleen Grimm '80
Charles M. Guria '86
John J. P. Howley '89
Diane E. Iushewitz '75
Howard J. Kaplan '88
Sylvia Kinard '88
David I. Levine '90
Letty Manne '93
Carolyn M. Penna '84
Risa B. Procton '92
Leslie J. Purificacion '91
Marilyn Schechter '78
Cathy Seidner '87
Lori S. Sherman '90
Lawrence Silverman '77
Hon. Milton L. Williams '63
Gregory Winter '79

Calling all Alumni...

Once again this year the Alumni Association and the Office of Career Services look forward to hearing from NYLS alumni, new and former mentors alike, through its Mentor/Network Survey. Newly revised, the questionnaires will enhance Career Services' resource base in order to promote student use of the *Mentor/Network Program*, and will also include, by student demand, a new section on alternative career choices outside the law.

We hope that you will seriously consider taking part in the *Mentor/Network Program* this year – all commitments of time by alumni are of great value to students, whether it is meeting with a student for twenty minutes, establishing an on-going advisory relationship, or taking part in the Annual Mentor/Network reception, which this year will involve students meeting with alumni according to area of expertise.

The Office of Career Services would love to thank all of the alumni who participate in the Alumni Association-Career Services *Mentor/Network Program* but there are too many to thank individually. Director of Career Services Deborah Howard is happy to report, however, that there are over 400 alumni who are willing to act as mentors to students and fellow alums.

To find out more about the program, please contact Beth Sferrazza in the Office of Career Services at (212) 431-2345.

Alumni Calendar 1993-1994

Please note all dates and events are subject to confirmation.

November

10

Alumni Association Dinner Dance
Beverly C. Chell '67, honoree
Grand Hyatt Hotel
6:30 to 11:00 p.m.

December

7

Alumni Holiday Party
Broadway Museum Cafe at the Embassy Suites Hotel
1568 Broadway, N.Y.
6:00-8:00 p.m.

16

Annual Open Board Meeting
The New York Law School Alumni Association
Board of Directors
Faculty Dining Room

January

28

Alumni Association Annual Luncheon
Plaza Hotel
12 noon

May

21

Class Reunions
(for classes ending in 4 & 9)

June

6

Commencement
Avery Fisher Hall
2:00 p.m.

For further information on any of these events please call Steve Johansen, Director of Alumni Affairs (212) 431-2808.

The Office of Career Services seeks your help in providing students and alumni/ae with the greatest number of employment opportunities. If you know of any openings for students, recent graduates or experienced alumni/ae with your organization or another, please complete and mail or fax the following form to:

Office of Career Services
The New York Law School
57 Worth Street
New York, NY 10013
Telephone: (212) 431-2345
Fax Number: (212) 274-1491

Your name _____

Class of 19 _____

Your daytime telephone _____

Should someone from Career Services speak with you before contacting the employer? _____

Name of employer _____

Person to contact _____

Address _____

Telephone _____

Notes _____

